

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1364

2005 HOUSE EDUCATION

HB 1364

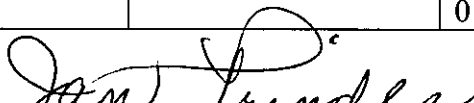
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1364**

House Education Committee

☐ Conference Committee

Hearing Date **25 January 05**

Tape Number	Side A	Side B	Meter #
1	x		3600 - end
		X	0 - end
2	x		0 -500
Committee Clerk Signature 			

Minutes:

Chairman Kelsch opened the meeting on HB 1364.

Rep. Bette Grandee, District 41, introduced HB 1364. Many times this issue has come before the Legislature in one form or another. About ten years ago we tried to address this issue and the concerns of the students and parents who are paying tuition and attending classes only to find out that their instructors are not able to intelligibly speak English. The students find it too difficult to comprehend what the instructor is saying or is having a difficult time deciphering the accent. Let's keep this discussion in perspective. The number one priority for the higher education system is the education of the student, the paying customer at the University. Even though the Legislature has said that we expect the instructors to be fluent in English and we stated this over ten years ago, this problem is not getting any better. We are accused of trying to micro manage, yet how can we not step in when there is a need for change. If the priority of the University

System Is not to educate students, we do have a problem. She read excerpts from emails she received from students and parents.

From a person in Fargo: "My son is a freshman majoring in premed at UND. He is in the second semester biology class, when he got there he found out the new professor did not speak English. No one could understand her. She is a teaching assistant. He talked to the main professor and was told that he would have to switch the section. He would have to redo his schedule and find another section. Having a teacher teach that cannot speak conversational English, is ridiculous. He shouldn't have to go through and redo his schedule that took up his time in the first place."

This is from a gentleman who just finished school and now back living in New Rockford: "I'm a former student from NDSU. . . I cannot begin to tell you how many times we complained about instructors that were unintelligible. I can remember in particular one of my friends who had to get through a calculus class in order to get his degree. The class was taught by a man . . . who was almost completely unable to speak English. My friend was so frustrated he quit school."

This from Grand Forks: "I wish to voice my support on this bill. My daughter was attending NDSU for two years but now she has dropped out because of her dealings with trying to get through the advanced math structure of the University System. She had been an advanced math student all through high school with As and Bs and was unable to understand her instructors and was finding herself failing the classes and having to drop them." She makes reference to the newspaper article, "I love the quote that came that says we have a mechanism where if they (meaning the students) are having trouble, they can complain. Well, she complained and was told NDSU would not do anything about it because the instructor needs the practice. My

daughter pays thousands of dollars and receives an education that she is denied access to because there was more interest in not hurting the instructor's feelings. She had no recourse so she dropped the classes and she was paying for all this on her own, she has now stopped going to school . . . and the mother talks more about her being back home and how it's been very depressing for daughter and she goes into some very personal things."

This person talks about taking computer and math classes: "I have had to spend more time trying to figure out what the professors are trying to say and not on what the professors are trying to tell me."

Mechanical Engineer from NDSU: "I have had many teachers some good, some bad. This bill is important because of the teachers and TAs and what they are trying to teach us is lost in them not being able to speak well enough and trying to decide if I understand what they are saying." It's the same story repeatedly. This seems to be the scenario being played out throughout time. This bill is being offered at least for discussion to see if there is a way to make a proper correction. What I would like to do is in section 1, line 8, 1, take out the words "before and individual is assigned to instruct students." It's not a matter of if they should be employed in research, and all this. The issue is when they come in contact with instructing of the students. On line 10, when it gets to the chair of the department, add in "set up a panel of dept. chair, one of the VPs, a third person would be a student from the same major field of study as the interviewee, a member of the student governing body." Students would then be able to do a blind ballot on if the person speaks English clearly. I will put this in proper form for you. This gives students opportunity to look through process. I also recommend that something about recourse and direction be given to students.

Chairman Kelsch: When do expect to have the amendment? You will just give it to me?

Grande: This afternoon, yes I will.

Rep. Horter: Did you pursue other avenues before drafting this bill?

Grande: Yes, in December I had the opportunity to visit with Chancellor Potts briefly about this situation, he directed it towards NDSU, I had a few calls from NDSU and spoke to their director in this area a couple of times. What I felt came out of the conversation was "that's all fine, we have to names of the professors." None of the students really felt they should be offering up. They felt uncomfortable with that mechanism. One did give a name, all I got was "Oh, I understand him clearly." Well, students don't.

Rep. Mueller: We have a representative from the student association who will be speaking to this issue.

Grande: Yes, they will speak.

Rep. Sitte: I too have heard complaints from constituents and that's why I signed on to this bill. We are open to amendments, we just feel the issue needs to be addressed.

Rep. Hawken: Did you or someone else speak to the Board of Higher Education on this issue?

Rep. Sitte: I didn't because Rep. Grande said she had.

Chairman Kelsch: Out of curiosity, I understand what we are trying to do here is to make it easier for those students out there who cannot understand their professor. My question is are these going to be the same kids that when they get out in the work world and they have a supervisor or someone that they can't understand, are they going to be doing the same thing. Is it more of an issue of tolerance or intolerance or is it actually a problem?

Rep. Sitte: From personal information when I worked in the Public Affairs office at BSC, there was a Chinese math instructor who came for one semester. In trying to be cordial and make conversation, it was obvious that her ability to speak English was so extremely limited it was shocking. I know it to be true that there are people who have a difficult time communicating.

Rep. Herbel: When this becomes a problem for students, I would transfer out to another class similar to that. That kind of thing does happen. Wouldn't that tend to eliminate the position since no one is taking the class.

Rep. Herbel: Depending on the size of the college or university, often there are not several classes to choose from. You could be thrown out of sequence and could add as much as a whole year to your education.

Mueller: We talked about pools of available educators. Do you have any concern that this bill will limit the pool on a college level. Are we getting into the micro management thing in what we ask our college administration to be responsible for?

Rep. Mueller: I'm in a difficult situation because my husband is a department chair at college in this state and I know how difficult it is for him to find qualified instructors. In reality there are situations that there are times when people who have extremely limited English proficiency are hired to teach.

Sara Beck, representing the students of North Dakota State University, testified in opposition to the HB 1364. **(Testimony attached.)** Depending on what the amendments to the bill may be, they may change their position.

Rep. Mueller: Some of what you suggest in your testimony is what the bill attempts to do.

Are you suggesting that the criteria you list should be things that the colleges take under their own where with all or are suggesting that some of those things be in Century Code?

Beck: I would say it should be left to the institution. However, based on what I know about past issues, leaving it to the institutions sometimes nothing really gets done. If nothing gets done, then it needs to be at the next higher level. I don't know if that's the University System first and then the State, or directly to the State. But leaving it the institutions, would require some follow up. Does that answer your question?

Rep. Mueller: You'd make a wonderful politician.

Rep. Herbel: Have any of the instructors that you know of at NDSU been removed because of their inability to speak English.

Beck: I asked that question of the provost that question and he said he could remember one instance in probably the last 10 years.

Rep. Herbel: Have you ever transferred from one class to another because you had an instructor that you found difficult to understand.

Beck: No, actually that may be because of the field I'm in. I'm in child development/family science. I've only had one computer science course that was taught by an international teacher. I had no problem understanding her. I do know of people who have transferred.

Wall: In the last paragraph you state that NDSU's policies are a good example of how to confront the problem. It appears that what you are doing now should be a model for all universities yet the anecdotal material of students having problems all emanates from NDSU. Can you tell me why that is?

Beck: I strongly feel that the problem at NDSU, even though we have good policies, is that students don't want to participate in those policies.

Mike Hillman, vice chancellor for Academic and Student Affairs for the ND State

University System, testified in opposition to the bill. **(Testimony attached.)** His written testimony included communication policies for the university system, DSU and NDSU.

Rep. Herbel: You indicated there are policies in place and they are working. I refer back to Sara Beck's testimony. My question is how is that person slipping through the process if the communication is going to be that poor.

Hillman: This is a complex issue. Is the problem in the ears of listener or the mouth of speaker.

Sometimes it's hard to determine. We need to have students exposed to a diversity of faculty.

Obviously they need to have a minimum of English communication skills. That doesn't mean someone doesn't slip through the cracks. We are so used to everyone having a Midwestern dialect. My guess it's just difficult to adjust. Most students work through it within the first week or so. It's a learning process for everyone. It's difficult to draw a line, but the TOFFEL exam is used and there are objective ways to measure the oral ability and campuses do have standards. I know that students are sometimes hesitant to come forward. It can be anonymous, but we need to know which instructor in which class seems to be the problem.

Rep. Norland: Do the colleges go through accreditation as do the high schools? Is it not true that in order to pass that you have to be multicultural diversified?

Hillman: Yes, all 11 system campuses have accreditation from the Higher Learning Commission of the North Central Association. There is an expectation that students are exposed to diversity.

Rep. Norland: This multicultural diversification is not talking about someone who doesn't have a Midwestern dialect. It's talking basically about if you have enough Native Americans, Afro-American, Chinese, Asian, Middle Eastern teachers. Am I right?

Hillman: There is no quota but there is an expectation that students are exposed to diverse experiences.

Rep. Horter: I would like to ask you about a statement you made about students using this law as an excuse to drop any course. It almost says they are going to use this as a way out.

Hillman: Everyone takes advantage of every option available to us. Under this, there is no criteria that would limit the complaint coming forward. If a student is failing a course for any of many multiple reasons, if I had the option to get 100% refund when I withdraw, why not do it.

Rep. Horter: You also say this would over ride your refund policies and affect financial aid eligibility?

Hillman: The refund policies in place are consistent with federal financial aid requirements. Early in the semester a student can withdraw without penalty. In order for a students' federal financial aid to continue they must be earning credits. If you have a chance of passing a course you may really want to stay in it or you may not be eligible for financial aid next year.

Rep. Sitte: Look at the NDSU policy that talks about the test of spoken English. People need to have a score of 225. That score indicates the person is generally comprehensible to Americans who are not used to listening to speakers whose first language is not English. When you look at the table, I look at why you set the score at 225. Perhaps we should look at raising that to 249 or 250.

Hillman: I'll refer that to Dr. Ken Nygard.

Chairman Kelsch: If you look down further on the page you will see that classroom instructors are at 250. The others are teaching assistants, graders, etc.

Janelle Masters, dean of Faculty, BSC, testified in opposition of the bill. **(Testimony attached.)** Her testimony includes a copy of the BSC Policy and Procedures Manual relating to Student Grievance and Appeal.

Rep. Hawken: I do not see specifically in your policy that a student can report anonymously. Is there a provision for that?

Masters: Yes, they may report anonymously.

Dr. Ken Nygard, department chair of Computer Science, NDSU, testified in opposition of the bill. He provided some background information of when he was faculty representative to the State Board of Higher Education when this issued was reviewed. At NDSU he chaired the committee to develop the policy on communication proficiency in 1994. There were 19 meetings of the committee to develop the policy. The policy was expanded in 2000 and expanded and made more precisely. As chair of a department he has responsibility to hire faculty and graduate students. They do have international faculty and graduate students and their performance is the corpus of what we are talking about today. He elaborated on the NDSU policy and how it plays out in practice in a department like his own. He walked through the hiring process that includes students on the committees and other avenues of direct student input to the process.

Rep. Haas: The way you describe the process, it sounds like it would be absolutely fool proof and that every instructor would have discernible English. Then I hear from Dr. Hillman that there is an expectation that students are going to have to develop the ability to understand

accents. Where is the balance between the responsibility of the university to exercise the process you describe in ensuring the students are going to be able to understand their instructors.

I hear some conflicting things here.

Nygard: It may sound that way, you are going to hear some accents but that doesn't mean they haven't cleared the standards I just described. I assert though, that in practically all the cases I deal with, there is a process of adaptation and it isn't much of an issue before long. When we do have complaints, it's often that there is more to the complaint than just English proficiency. In one case, I pulled the grades up for the course and the student attended class the first day and turned in the first assignment. There were 50 assignments. The student did not show up in class for the next three weeks and assignments 2 through 15 were missing. He flunked the course but said it was an English proficiency problem. That particular international instructor came to us after 4 years teaching at Concordia College and cleared all the standards. You are going to get complaints and things like these happen. I can also tell you that in my 8 plus years as department chair, I have issued non-renewal contracts for two professors who were on tenure track, a very serious step, and it had to do with teacher effectiveness, not necessarily English proficiency. In one of those cases I required the professor to go through the intensive English language and enlisted help from the Teaching Support Center. In my judgment this person was born researcher but not a born teacher and I issued a non-renewal contract and that person is now gone. So, we enforce.

Chris Runge, executive director of the ND Public Employees Association, AFT Local 4660, testified in opposition to the bill. **(Testimony attached.)** Their concern is mostly a due process issue for faculty.

ShawnAnne Tangney, associate professor of English, MSU, speaking on behalf of herself, testified in opposition to bill. She had three points to make: (1) The bill speaks against diversity and tolerance essential to any university mission and environment. (2) HB 1364 seems ignorant of the fact that universities are required to encourage and demonstrate diversity to their accrediting agencies. (3) It hinders efforts to expand horizons of the NDUS faculty and student body.

Michelle Sauer, assistant professor of English, MSU, speaking on behalf of herself, testified in opposition to the bill. She asked what images of ND do we want to project to the rest of the world and the rest of the country. HB 1364 poses a culture of built in discrimination. This can be described as forms of discrimination that are structured into political positions and decisions.

It is supported by explicit and implicit actions/behaviors by individuals, institutional and governmental policies and practices that by default or by design perceive and treat people in a manner that keeps them in an inferior position because of their minority status. Although this bill does not explicitly state that, foreign born instructors will be subject to this review process. In practice, these are the instructors who will most likely be effected. Similarly, American born individuals with speech related disabilities and/or persons of lower socioeconomic classes might also be penalized by this proposed legislation. In endorsing this bill the state of ND would be agreeing that white, upper class American English must be the only language spoken in the classroom. Students must be able to understand the language the diversity. They must be able to negotiate the network of cultures, values, and languages in today's ever-changing world. When reviewing this bill with my students they realized the potential of one student to hinder the educational opportunity of many students. They also recognized the inherent discrimination

against multiple minority groups. They commented on the lack of uniform, enforceable standards. At MSU we hold that responsibility for learning is shared 100%/100% by teachers and students. Our campus celebrates diversity in students, staff, faculty, administrators, alumni and community members whereby we create lifelong opportunities and connectivity.

Rep. Horter: You use the word discrimination but this bill follows board policy, would you say board policy is discriminatory.

Sauer: Board policy is not discriminatory because it provides for a uniform procedure. The way this bill is written it specifically focuses on foreign born instructors even though it does not state that. The process outlined tends to specifically separate out those individuals. In order for it to be nondiscriminatory, although I grew up in Fargo, I would have to go through the same interview process as a foreign born instructor.

Chairman Kelsch closed the hearing on HB 1364

Discussion of HB 1364 continued later in the day.

Chairman Kelsch asked Rep. Sitte when she would have her amendment to the bill.

Rep. Sitte: I will work with Rep. Grande on that. I would like to know the wishes of the committee on that one.

Rep. Horter: What about a resolution.

Chairman Kelsch: This issue came up ten years ago and we felt it was not our position to meddle in it. We took it the University System and told them to deal with it and that's when they came out with their policy. Is this truly a major problem or a way for an easy way out. We've heard both sides. Is it better to forward a resolution to the University System and say tighten up your policies and let them know what our expectations are.

Rep. Haas: I think Rep. Horter's idea is good and we should do. I would like to make another point. Some of the testimony we hear this morning distorted the issue this bill is trying to address. It is not, and never has been, an issue of us being discriminatory or not wanting diversity on university campuses. I firmly believe all of us support that. To distort this to make it look like that made me a little bit angry. The bottom line issue is simply that we think it's reasonable to expect that students can understand their instructors at the university level. It's just that simple. I would be in favor of doing a resolution to heighten the awareness within the University System that we are serious and they need to provide assurance that students will be able to instructors in the classroom.

Rep. Solberg: I agree with Rep. Haas. This is not an issue of discrimination. I sent 4 daughters to NDSU and it cost those four girls and their mom and dad a lot of money. That was a major concern of every one of these four daughters that they were going to classes where they could not understand the instructors or presenters. They were all disappointed that they were going to a college in the USA and could not understand the instructors. I see a need to call some people's attention to this. If I went to Spain and was an instructor there, I would be expected to learn the Spanish language.

Rep. Mueller: I think it wise that the resolution be put together. In fairness to Rep. Grande we should see her amendments.

Chairman Kelsch: We can look at her amendments but I want a draft resolution done now so it's together. So when we take the bill up we can see both and be done with it.

Rep. Sitte: When we listen to Dr. Nygard, he works with a lot of foreign born people, his ear is attuned to it. When you take the typical ND student who has not traveled more than 60 miles from home, has not exposed, we are probably the most non diverse people in the nation.

Chairman Kelsch: Typically speaking we can correct problems by saying "do it" or next session there will be a bill. Rep. Sitte hit the nail on the head. I do a lot of traveling so I run into people and I have a very keen ear.

Chairman Kelsch appointed Reps: **Horter, Sitte & Hunsakor** to come up with a resolution. She suggested they work with Mike Hillman and get his input. We can also include something about communication of policy to student.

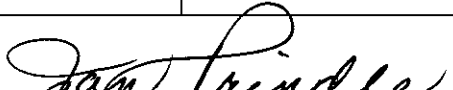
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1364**

House Education Committee

☐ Conference Committee

Hearing Date **31 January 05**

Tape Number	Side A	Side B	Meter #
1		X	3220 - 4220
Committee Clerk Signature 			

Minutes:

Chairman Kelsch opened discussion of HB 1364.

Rep. Sitte presented an amendment to the bill. (**Copy attached.**) Even though the State Board of Higher Education already has a policy relating to communication skills for faculty, we want that policy to address all the different issues. It requires them to report to an interim committee.

Chairman Kelsch: The problem is not necessarily the professors, it's the teaching assistants.

Is it clear in here.

Rep. Sitte: We need to add "and teaching assistants" in line 2.

Chairman Kelsch: I visited with my brother in law who is a professor at UND about this. He said they had an Asian person they hired as a Teaching Assistant. Her problem was compounded because not only did she have a strong Chinese accent, but she was very soft spoken. It wasn't so much that the students couldn't understand her, but they couldn't hear her. They started receiving a number of complaints and she was removed.

Rep. Sitte: I move to that we add the words "and teaching assistants" after "faculty" on line two.

Rep. Haas: I second.

A voice vote was called.

Yes: 14 No: 0 Absent: 0 The motion carried.

Rep. Hawken: I move a Do Pass on the Amendment as amended.

Rep. Johnson: I second.

A voice vote was called.

Yes: 14 No: 0 Absent: 0 The motion carried.

Rep. Sitte: I move a Do Pass as Amended

Rep. Horter: I second.

Rep. Haas: I think this is much better than a resolution. A resolution would add emphasis, but this will add action. I think that's important.

Rep. Herbel: The day that we heard this bill there were a bunch of pharmacy students in the Great Hall upstairs and I visited with about a half dozen or so. They really liked the idea that something would address this problem. They felt strongly about it. Every one of them I talked to said it is a problem, it may not be for everybody, but it was for them. Even if we don't mandate something, we get them to look at the issue and give serious consideration to it.

Rep. Mueller: I'm not sure we need to do this at all. It's a legitimate issue but the campuses who testified all have these kinds of things in place. I don't know what this doing that they are not already doing.

Page 3

House Education Committee

Bill/Resolution Number **HB 1364**

Hearing Date **31 Jan 05**

Rep. Sitte: Whereas we did hear that NDSU has a policy in place we don't know that's true in every other institution in the state. This would make it uniform.

Rep. Meier: We had a district forum in our district this weekend and half the constituents there had issues with this bill and wanted to see it passed. I think it's a very good idea. It encourages the universities to do something.

A roll call vote was called.

Yes: 13 No: 1 Absent: 0 The motion carried.

Rep. Sitte will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1364

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to communication between instructors and students."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

The state board of higher ^{and teaching assistant} education shall create a policy for all its institutions relating to the assessment of faculty/communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems. The state board of higher education shall report its findings and recommendations to an interim committee, designated by the legislative council, before July 1, 2006."

Renumber accordingly

House Amendments to HB 1364 - Education Committee 02/01/2005

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to English pronunciation by faculty and teaching assistants."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. FACULTY - ENGLISH PRONUNCIATION - POLICY - REPORT.

The state board of higher education shall create a policy for all institutions under its control, relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems. Before July 1, 2006, the state board of higher education shall report to the legislative council regarding implementation of the policy."

Renumber accordingly

Date: 31 Jan 05
Roll Call Vote #: 1364

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1364

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amend presented amendment to add "and teaching assistants"
Motion Made By Sitte Seconded By Haas

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep. Hanson	✓	
Vice Chairman Johnson	✓		Rep. Hunsakor	✓	
Rep. Haas	✓		Rep. Mueller	✓	
Rep. Hawken	✓		Rep. Solberg	✓	
Rep. Herbel	✓				
Rep. Horter	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Wall	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 31 Jan 05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1364

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved to amend orig bill per newly ^{passed} amendments

Motion Made By Hawken Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep. Hanson	✓	
Vice Chairman Johnson	✓		Rep. Hunsakor	✓	
Rep. Haas	✓		Rep. Mueller	✓	
Rep. Hawken	✓		Rep. Solberg	✓	
Rep. Herbel	✓				
Rep. Horter	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Wall	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 31 Jan
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1364

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Pass as amended

Motion Made By Sittle Seconded By Hortel

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep. Hanson	✓	
Vice Chairman Johnson	✓		Rep. Hunsakor	✓	
Rep. Haas	✓		Rep. Mueller		✓
Rep. Hawken	✓		Rep. Solberg	✓	
Rep. Herbel	✓				
Rep. Hortel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sittle	✓				
Rep. Wall	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Sittle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1364: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1364 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act relating to English pronunciation by faculty and teaching assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. FACULTY - ENGLISH PRONUNCIATION - POLICY - REPORT.

The state board of higher education shall create a policy for all institutions under its control, relating to the assessment of faculty and teaching assistant communication skills, including the ability to speak English clearly and with good pronunciation, the notification to students of opportunities to file complaints, the process for responding to student complaints, and the resolution of reported communication problems. Before July 1, 2006, the state board of higher education shall report to the legislative council regarding implementation of the policy."

Renumber accordingly

2005 SENATE EDUCATION

HB 1364

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1364

Senate Education Committee

☐ Conference Committee

Hearing Date 03/09/05

Tape Number	Side A	Side B	Meter #
1	x		2040-end
2	x		0-830
<u>2</u>			1150-1360
Committee Clerk Signature <i>Patty Wilkins</i>			

Minutes: Relating to English pronunciation by faculty and teaching assistants.

Senator Freborg : Call the meeting to order on **HB 1364**

Representative Grande : Is from District 41 in Fargo, introduced HB 1364

See attached : written testimony (also gave some examples what is happening)

Senator Seymour : When you look at the ND University System what schools seem to be the worst?

Rep. Grande : From what I am getting from feed back, it is just two major Universities, NDSU and UND. I have heard a great deal out of Bismarck in the last few years.

Senator Erbele : Are we seeing this problem with like the graduate students or are they actually assistance.

Rep. Grande : I am hearing mostly this is coming from graduate assistants, teaching assistants, it wasn't the professors as far as most of the students were referring to them, like the reference as PA's.

Senator Taylor : I know the bill has changed as you said to ask the University system to create a policy. You say that there is already policy in the University system and how would this new policy as it is in the bill, differ from what they got just the report from the legislature or what?

Rep. Grande : Some of the University systems said that they have manuals in place or policy in place, and testimony on the House side I believe a couple of bills were presented to the committee. I would like to see that there is a standard set across if we are going to have a University system, the system should have a policy in place, where you can attend one University and carry that over into the next University system. We could address this as a whole, if the manuals are in place, they need to be presented and walked through, b/c if there are, they are not working.

Senator Flakoll : Two part question? Were those amendments put into the original bill at all? and secondly do you know what percent of classes, and labs are taught by TA's?

Rep. Grande : I have just actually looked at these amendments in the last couple of days. As I was reviewing that study and I have not felt like it was clear, I thought there should be more information presented. This is one avenue I was looking at that would be good to see. I have not looked into who is teaching what courses.

Testimony in opposition of this bill :

Mike Hillman : Vice Chancellor for Academic and Student Affairs with the ND University Systems.

See attached : written testimony

Senator Erbele : Do the proficiency tests and other testing apply to the graduate assistance and the TA's as well they have to go through that before and do the instructors choose the TA? They obviously are supervised by them are they also selected specifically by them.

Mike Hillman : This would apply to any instructor, whether they are teaching assistant or vo ag professor, the highering it varies from campus to campus, but a committee is involved and some administrator, depending on the size of the campus. So the administrator makes the highering decision, it could be a dean or a department chair. Some of the larger departments at NDSU for example they have an extensive process that they go through.

Senator Flakoll : Again going back to the concern with respect to one university system it would appear that with all the variety of policies in place across the institutions that one teacher may be able to provide instruction in one university at one location but maybe not at another. Why isn't there a university wide policy more so?

Mike Hillman : Are you referring to having (meter 4235) can't make out what the testifier is saying. Something to do with highering criteria. Each campus is in a different market. Between different department there are different challenges, different highering criteria.

Senator Flakoll : It looks like some of the original language dates back to March of 1993, do we have any data to show where we were then and where we are now in terms of the number of complaints and number of professors that may not be eligible or that type of thing b/c they didn't pass their test.

Mike Hillman : We don't b/c complaints are not easy to log and are not standardize we don't have solid information on all complaints or any of the complaints that we get are hearsay, indirect, anonymous and so we have not been tracking this. I know some have come to the office

but only one last yr. The majority of the offices say they have not receive not even one formal or informal, being something through hearsay.

Senator Flakoll : It would seem that some of provisions in this bill would allow you to do or get a little better handle on some of those complaints and have some more uniformity in terms of due process for those. Do you disagree with that?

Mike Hillman : I did ask all campuses to relay to me the # of complaints they had in the last ten yrs. and again most of the campuses had no complaints and even the larger campuses received such a small # of complaints that it didn't merit we thought implementing a formal tracking system on that. Given these discussions, in this legislative session, this is something that we will definitely consider, I think feed back in how the complaint in terms of how the complaint was handled what action was taken I think would be important and we will consider providing to the board and making those available to the legislature.

Senator Flakoll : We have discussed mostly with those that are graduate students receiving stipends, when I was an under grad at age 19 I was able to TA a class with the only direct benefit was that I could get a credit for that. Is there any provisions for that in here where they are not receiving stipends or that type of thing in your policies.

Mike Hillman : The hiring of TA's is always a formal process, with significant compensation that is involved. There is really a range of TA's, many are simply proctors for example, many are exam graders, and some are test and lab assistance. In every employment situation there would be a contract.

Senator Flakoll : Do we have any kind of data or % of # of cost offerings or hour offerings or labs or anything being taught by graduate students / TA's across all institutions or various institutions, do we have a handle on that?

Mike Hillman : As you know we are in the process of migrating from our old administration to the connect ND system and we have campuses in various stages of that transition, so the information in terms of percentage of sections taught by teaching assistance or lectors or instructors, we could certainly pull together. It may take a while to match data from two different administrative systems b/c with seven campuses on one and four on another.

Senator Erbele : You talked a little bit about tracking and there wasn't a whole lot of documentation, of people complaining about the instructors b/c of the English proficiency, but when we heard the proponents said that a lot of the students response was simply to drop the class. When the student drops the class is there any tracking as to why they dropped the class?

Mike Hillman : There is a formal drop process, that doesn't necessarily correct the reason for the drop. Often times the instructor has to approve the drop, the student has to speak to the instructor or the department or administrator. The reason for the drop really does vary, it is interesting that a lot of the complaints come from engineering, physics, computer science. When a student drops a class b/c of the inability of the instructor, it may be communication or just a teaching problem, or maybe the student is just in too many tough classes.

Senator Seymour : Say we are going to higher a Dean of Arch in Science at the Minot State University, would that Dean, or would we be guaranteed that they could speak English with the way the system works?

Mike Hillman : Absolutely, students would be in that process as well. Many campuses have not just the student committee member, on the search committee for a Dean, but they would invite the Dean to interact with the group of students. Minot State just higherd a new president, and I happened to have the privilege of being involved in the interaction between the candidate and a group of students over lunch meal. So we get the feed back from those students.

Senator G. Lee : You have answered many of my questions, but it seems to beg a question then if there isn't much of a problem and that you have got formal policies in place that deal with the issue, why do we have this here. It made it through one leg of the journey already, there seems to be some substance to what is being said, do you have a response to that?

Mike Hillman : There is probably a lot around of issues like this, to some extent it is like asking students are you happy with the lunch in the cafeteria, most students will say no. If you ask students how is the parking around here, students are going to grumble, we would like better parking. If you ask the students do your instructors speak English as well as your neighbors next door, a lot of them will say no. What was interesting and I meant to bring a copy of it, there was a Fargo Forum article that talked about the maturing and learning process that happens both ways. When we hire a faculty member they have to come in with acceptable communication, we expect those to continue to improve, and if they don't the faculty are terminated, we don't continue those contracts period. Another interesting part of the education process is students learning to grow too, going to college for the first time you are interacting with types of people that you have not interacted with before. Some of the Seniors in that article in the forum, said they thought this was a problem, but I really learned to appreciate those faculty, b/c they were excellent instructors in their own right but they also prepared me to go out and get a job and interact with different kinds

of people once I graduated. I am going to be very vague in my answers, the university system or campuses have never taken any retribution against any student for any complaint that I am aware of. There are a lot of issues when someone starts college and this is one of the ones they are challenged with. It is a skill to learn how to listen to different kinds of people, I don't think this is as large a problem that this has been indicated. One of the things that the Legislature asks of the University System is to be accountable. You ask us to report on this and we do that to the appropriations committee. Make this an accountability measure, we can survey our students and report back to you on this.

Senator Freborg : I think this problem has been with us as long as I have been on the education committee, I have listened to this almost every session. I can speak personally b/c I had a daughter that went to college where this existed. I don't believe people come down with this for frivolous reasons. I do believe that it is more of a problem than the University System wants to recognize.

Senator Flakoll : I had two legislators serving currently in the 59th session there are three of them that took classes this past fall in the Higher Ed system, it looks like two of them are on the bill, is that a bit of a litmus test in terms of some displeasure or begging for some better solution to this problem?

Mike Hillman : I think the best way to get a start on this again is to get a handle in terms of the # of problems that we actually have, as I went back retroactively the majority of the campuses over the last ten yrs. has fewer problems other campuses have a small # of problems that are reported, the way to do this is to survey these students. They could be dropping out of courses for those reasons and we don't know about it. When this comes to our attention we could be asking for the

reasons, if it is articulation and then transfer that is the problem, we get two or three complaints a year that didn't transfer. The problem is that the Governor would get those as well. The best way if there is a continuing problem is to get a handle on the size of the problem, b/c the board has a policy in place. The eight years I have been here there has only been one complaint. Maybe we just need to pick up on these complaints b/c we haven't had even one in the last yr. Maybe they don't want to go to the Dean or the Vice President. If students are intimidated, maybe they don't want to go into depth with the instructor?

Senator Freborg : This is a little unusual, we have another sponsor here that I know is a proponent, we don't normally reopen testimony on one side or the other we'll give you about three minutes.

Senator Hacker : Is a sponsor of the bill and said he isn't against the University system, asked if they had the non engrossed version there, said that there have been quite a few changes, there is a lot of flexibility given to the higher education system, truth be known there is a problem. 85 % of a poll taken from the Fargo Forum, how accurate they are by any means I have no idea. 85 % of the people out of 1700 of them, mentioned that at some point and time they have had problems in our education system, this is not a new problem. This has been going on for years, this bill basically directs trying to get this situation under control. I have experienced trying or basically analyzing what the words were, coming out of the mouth and then going home and you studied what was just read to you and spoken to you off the power point b/c you didn't understand what was coming out of the instructors mouth. We couldn't understand the words or the concept. Sometimes we lose site who is the real customer here, that is probably why I signed onto this bill, there is some problem with this but my understanding is that there are these universities need to

be addressed with this problem. This needs to be under control and something needs to be done, reminding you who the real customer is here. These aren't just students dollars, they are state dollars, state tax payer dollars that are being used.

Senator Seymour : Give me an step by step solution of such a thing when the instructor can't speak English.

Senator Hacker : Exactly, what to do step by step is what we leave up to the higher education system, providing the flexibility to the engrossed bill. We tried to come to a conclusion what we needed to do in the previous bill. I am not in any means, by taking people who are maybe non native Americans, maybe not US citizens, b/c some of the information that they provide goes much beyond what you learn from a traditional teacher. They bring a lot of expertise, it isn't that we don't want these people to teach here, they provide a vital asset. Let's put them in a classroom where students can actually gain something from them.

Senator Flakoll : When you look through the 4 yrs. of college, would there be one of those that may have a greater ponderance of problems with TA's and the like, or are there classes that have more TA's or do they have more TA's when you are a Freshman VS Senior?

Senator Hacker : Some of your larger courses have TA's. Freshman and Sophomore yrs are larger classes.

Senator Flakoll : Would you as a Senior feel more comfortable in complaining today if you had to pay an instructor that you thought you might have some problem with as opposed to when you were a Freshman?

Senator Hacker : I would never have a problem with filing a complaint, however there are students out there that would think there would be remedial action upon them. Some won't say a thing, they would just drop the class b/c they don't understand them.

Senator Freborg adjourned the meeting.

Senator Freborg brought it back to order (meter 1150 tape 2)

Senator Flakoll : Moved a **Do Pass** on engrossed **HB 1364**

Senator G. Lee second this motion.

Discussion:

Senator Erbele : Senator Flakoll did you want to consider at all the extra language others brought in?

Senator Flakoll : No

Senator Seymour : Higher Education people feel they had a policy in place already, to handle this.

Senator Freborg : They do feel that way Senator Seymour they have for yrs.

Senator Taylor : One of the things that might have been a good amendment on the bill would have been a survey of the extent of the problem I guess, that could be undertaken at the campuses.

Senator Flakoll : I think that was brought up by the Representative of the University System and as such, I think they can do that.

No further discussion

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Senate Education Committee

Bill/Resolution Number HB 1364

Hearing Date 03/09/05

Hearing None, Clerk took roll: Vote 4 Yea 2 Nay 0 Absent

Date: _____
Roll Call Vote #: _____

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1364

Senate SENATE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as engrossed

Motion Made By **Seconded By**

[illegible]

Total (Yes) 4 No 2

Absent

Floor Assignment Hall

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 9, 2005 1:43 p.m.

Module No: SR-43-4527
Carrier: Flakoll
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1364, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends DO PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1364 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1364

The policy shall have program options for the instructors that include foreign accent modification, accent reduction, English language use (choosing correct words) and cross cultural communication in the workplace.

Mr. Chairman and distinguished Representatives, my name is Sarah Beck and I am representing the students at North Dakota State University.

Sunday morning I sent out an email over the student listserv asking for student testimony on their ability to understand or not understand international instructors. At this point I have heard back from over 200 students with a wide range of responses. Let me share with you a few of the more jaw-dropping stories:

1. It took students in one class about five minutes to figure out that when their professor said "mattresses" he meant "matrices," and when he said "ahaded pass" he meant "ordered pairs."
2. In another class it took students about 20 minutes to figure out "mother" meant "method," and "Swedish" meant "switches."
3. One teacher's response to a student's question was, "I know how to do this in Chinese, I don't know how to explain in English."
4. There are good handful of reports that if a teacher couldn't understand students' questions they would say "ah, nevermind," or move on to a different topic without answering the questions.
5. A large number of students reported that after a couple weeks they could figure out most of what the instructor was saying and could get by in the class, but the biggest problem for them was the instructor's inability to understand their questions. One instructor actually called in another instructor to translate a question for them.

There are so many more interesting stories that I have read over the past couple days. Some that make me wonder if anything is ever done about this problem.

According to Provost Craig Schnell, students can anonymously report an instructor at any time to him. He follows up with every single case reported on all TAs, instructors, and faculty members. He also said that many times the complainant complained about language when there was another reason.

NDSU has a proactive approach to this problem. Search committees are required to have students serve on them and participate in the hiring process during which they sit through a sample lecture.

Based on my knowledge and interactions with the NDSU administration, I know that Provost Schnell has a genuine care and concern for the students and takes all complaints seriously. This is why the issue is dealt with at the Vice President level.

On the other hand, this problem may also be blown way out of proportion. Being that we are increasingly becoming a global nation, there are a number of students that feel there is an element of simply learning how to communicate and listen to others with thick accents.

There is also a great deal of subjectivity in deciding if an individual is unable to speak English clearly enough. For instance, some individuals have absolutely no problem listening to people from other countries even with the thickest of accents. Other people will struggle to understand a person born and raised in New York or the deep south. So even though an instructor goes through an interview with someone at the university, it may depend on the interviewer's ability to understand others with accents.

With the bill as written, I feel that provisions 2 and 3 are far too harsh. Already students have seven days to drop a course with 100% refund and no record, and 15 days to drop with no record of dropping. The typical student can anticipate having a hard time understanding their instructor after a few days of class so these drop deadlines work fine.

With provision number 3, it would be hard to find another instructor to cover a class if the assigned instructor is removed from teaching.

So here are a few ideas:

1. Before the instructor is hired, have a panel interview them and include students like NDSU does.
2. Encourage students to drop a course according to the existing deadlines and report to the Provost if they dropped because of the instructor's inability to speak English clearly.
3. Have all campus Provosts inquire about every reported case.
4. Suggest campuses have a policy something to the effect that if the same teacher is reported more than once, they are re-interviewed by a panel which includes students.

The bottom line is that students must learn how to deal with accents. We cannot expect our state institutions to continue to have highly qualified instructors that only speak with a Midwestern accent. However, there is obviously a genuine problem that needs to be dealt with and personally, I really think NDSU's policies are a great example of how to confront the problem.

Testimony in opposition to HB 1364
House Education Committee
January 25, 2005

Good morning Madame Chair and members of the House Education Committee, for the record my name is Mike Hillman and I am Vice Chancellor for Academic and Student Affairs for the North Dakota University System. I am testifying in opposition to HB 1364 based on the expressed concerns of the Chancellor, the university system presidents and formal action taken in opposition to this bill by the State Board of Higher Education Budget and Finance Committee. The State Board of Higher Education has not met since the beginning of the 2005 Legislative Session but it is expected formally to oppose HB 1364 during its meeting Thursday of this week at Bismarck State College.

HB 1364 is not necessary because of State Board of Higher Education Policy 609 (attached) and because each campus within the system has already established a process to verify the communication skills of candidates for faculty positions. As an example, the policies of two campuses, NDSU and DSU, are also attached for your reference. Under Board policy each campus must develop a process and standards for validating and assessing the communication skills of faculty candidates. Typically this means that students as well as other faculty and campus staff assess candidate written and oral communication skills during the hiring process. Each campus has also established a process for students to file complaints regarding the communication skills of faculty.

More specifically, in response to each paragraph of the bill:

Paragraph 1 would require department chairs to conduct an oral interview and document the communication skills of the potential faculty member. This issue is already addressed by Board policy which requires each campus to "Develop the process and standards for validating and assessing proficiency through an inclusive process which recognizes the needs of departments, programs, students, and faculty". In fact, by including students in the assessment process, it could be argued that Board policy already goes beyond what would be required in the bill.

Paragraph 2 would require a complete refund for a course based on written notification from the student. There is no provision for an appeals process or independent assessment of the situation. This provision would override the standard refund process and may create challenges for financial aid administration, particularly Satisfactory Academic Progress which affects future financial aid eligibility. If enacted, Paragraph 2 could virtually eliminate failing grades across the system. Every student who is failing a course could blame it on the communication skills of the instructor even if English is the instructor's native language and the instructor is a lifelong resident of the United States. Our students are very bright and will soon learn to use this law as an excuse to drop any course with a bad grade to receive a complete refund. Also, by possibly waiting until the end of the semester to identify a communication problem, this paragraph would not encourage early identification and resolution of a possible problem.

Paragraph 3 requires reassignment of faculty to non-teaching positions if 10% of the students in the class complain. This paragraph also provides the opportunity for misuse.

Students don't like to go to classes early in the morning or late in the afternoon. One student in a class of 10 students could effectively have an instructor removed in hopes of getting re-registered in a class offered at a more favorable time. Also many faculty teach undergraduate and graduate sections. A complaint under Paragraph 3 would mean that the instructor would "not be permitted to instruct students", even in graduate sections where students may have no problem with the instructor's communication skills.

In summary, none of the bill's sections are necessary, and, by creating a process without checks and balances, the bill may create major administrative problems and, ultimately, problems for students. Members of the House Education committee, I urge you to recommend "Do Not Pass" on HB 1364. State Board of Higher Education Policy and complementary campus policies already address the communication skills of instructors within the system. Students should be encouraged to exercise their rights under existing policy if a potential problem exists. Students would not be well served by passing HB 1364. Madame Chair that concludes my remarks but I will certainly try to address any questions from the committee. I believe several representatives from system campuses are also here to oppose HB 1364 and to respond to questions regarding campus implementation of Policy 609.

NORTH DAKOTA

UNIVERSITY SYSTEM

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SBHE Policies

SUBJECT: PERSONNEL

EFFECTIVE: November 19, 1999

Section: 609 Communications Proficiency

Each institution shall establish a process for verifying communication skills, including the verbal and written English language proficiency of all personnel whose appointments include classroom instruction. The process must include procedures ensuring compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act and prohibit discrimination against a qualified individual with disabilities. The process must also guarantee protection against discrimination in violation of other rights protected under federal and state constitutions or laws and Board policies. Each institution shall:

- A. Develop the process and standards for validating and assessing proficiency through an inclusive process which recognizes the needs of departments, programs, students, and faculty;
- B. Determine proficiency prior to employment;
- C. Provide a means of continuously improving communication proficiency of all instructors to meet or exceed defined standards;
- D. Establish a mechanism for students and personnel affected by this policy to register concerns related to the provisions of this policy;
- E. Periodically review the effectiveness of the policy and provide reports to the Board upon request; and
- F. Establish procedures to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act, as well as federal and state constitutions and laws. The procedures shall include a mechanism to identify otherwise qualified personnel who may be unable to demonstrate requisite proficiency due to a disability or because of race, religion or other protected characteristic.

STATUTORY REFERENCE: Section 15-10-13.1, N.D.C.C.

HISTORY: New policy. SBHE Minutes, March 22, 1993, page. 6330.
Amendment SBHE Minutes, November 18-19, 1999.

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**POLICY MANUAL**

NORTH DAKOTA STATE UNIVERSITY FARGO, N.D.

For any questions
please send e-mail to:
NDSU.Policy.Manual@ndsu.nodak.edu

SECTION 339: NDSU POLICY ON COMMUNICATION PROFICIENCY**SOURCE:**

University Senate Policy
SBHE Policy Manual, Section 609
N.D.C.C. Section 15-10-13.1

1. **PURPOSE:** NDSU has established a process for verifying communication skills for all personnel whose appointments include classroom instruction. Communication, both oral and written, is, by definition, an interchange involving both the sender and the receiver. The NDSU Task Force on Communication Proficiency has taken both sender and receiver into account when developing communication skills verification. The policy affirms the university commitment to cultural diversity, as articulated by the NDSU mission statement, general education outcomes, and proposed strategic themes.

The policy is supportive of all NDSU instructional personnel and their efforts to continuously improve their communication skills.

2. **PROCESS AND STANDARDS FOR VALIDATING AND ASSESSING PROFICIENCY**

- 2.1 **New Faculty and Other Instructional Staff:**

Every faculty recruiting committee will include faculty from the unit and at least one student. A unit may wish to include both an undergraduate and a graduate student on the committee. The minimum qualifications for the position will include "effective oral and written communication skills." To assist the recruiting committee, each unit must have procedures for obtaining faculty and student input concerning communication proficiency of each candidate who is formally interviewed. Faculty involvement should be unit wide at this point in the process. Student(s) should be selected by the unit and should be representative of the type(s) of student(s) that the candidate will be teaching if he/she is hired. Comments and evaluations concerning communication proficiency received by the recruiting committee from faculty and students from the unit should be stated on the interview form. Academic Deans will verify that these procedures have been followed prior to forwarding a Request to Offer.

- 2.1.1 **Validating written communication proficiency:**

Candidates who are formally interviewed must provide materials suitable for evaluating written communication proficiency. Such materials should include a letter of application and samples of their written work(s). In addition, the recruiting committee may wish to specifically request that letters of reference include comments concerning communication.

Members of the recruiting committee, with assistance from faculty and students as described above, will use categories of excellent, satisfactory, or unsatisfactory in evaluating written communication proficiency. An overall rating of satisfactory is considered to be a minimal qualification.

- 2.1.2 **Validating spoken communication proficiency:**

Candidates who are formally interviewed will make an oral presentation suitable for evaluating communication proficiency. Members of the recruiting committee, with assistance from faculty and students as described above, will use categories of excellent, satisfactory, or unsatisfactory in

evaluating spoken communication proficiency. An overall rating of satisfactory is considered to be a minimal qualification.

2.2 Graduate Teaching Assistants (GTAs):

Before an academic unit assigns a teaching responsibility to a graduate student (or an undergraduate student in unusual cases), the Graduate School and University requirements described below must be met. There may be additional requirements in units with special needs.

2.2.1 Test of English as a Foreign Language (TOEFL):

All potential teaching assistants whose first language is not English must submit a Test of English as a Foreign Language (TOEFL) score of no less than 600 (or equivalent computer score) to the Graduate School office. A score of 600 is considered to demonstrate near-native proficiency in listening comprehension, the ability to understand English as spoken in North America, structure and written expression, the ability to recognize language that is appropriate for standard written English, vocabulary and reading comprehension, and the ability to understand nontechnical reading matter. The TOEFL examination is administered throughout the year locally, regionally, and in the students' homelands.

2.2.2 Requirements for written communication proficiency:

All potential teaching assistants must provide evidence of their proficiency in written communication skills by submitting evidence of one or more of the following:

2.2.2.1 Completion of at least one course in English Composition at an accredited institution of higher learning in the United States with a grade of B or better.

2.2.2.2 Completion of an advanced English writing course, e.g., technical writing, at an accredited institution of higher learning in the United States with the grade of B or better.

2.2.2.3 Completion of a writing sample that has received a "pass" grade by two readers designated by the Graduate Dean. One of the readers will be from the student's department. The sample may be submitted in advance with verification that it is his or her own work. The sample and grades are kept on file in the Office of Graduate Studies and Research.

2.2.2.4 Completion of the Test of Written English (TWE) with a score of 5.0 or higher for teaching assistants whose first language is not English and who do not meet any of requirements 1-3 above. This examination can be taken at the same time as the TOEFL examination at many, but not all, test sites. Each essay is scored by two independent Educational Testing Service readers. A score of 5.0 demonstrates competence in writing on both the rhetorical and syntactic levels, though the essay will probably have occasional errors.

2.2.2.5 Completion of North Dakota State University's five-week Intensive English Language Summer Program for teaching assistants whose first language is not English and who do not meet any of requirements 1-3 above. The program is designed to improve participants' four language skills: listening, speaking, reading, and writing.

2.2.2.6 Completion of English 112-114 (Writing for Non-native Speakers) with a grade of B or better for teaching assistants whose first language is not English and who do not meet any of requirements 1-3 above.

2.2.3 Requirements for spoken communications proficiency:

Potential teaching assistants whose first language is not English must obtain a minimum score of 225 on the Test of Spoken English (TSE). This locally administered examination assesses oral language proficiency of English spoken in North America. It evaluates a person's overall comprehensibility,

pronunciation, grammar, and fluency. A score of 225 indicates that the individual is generally comprehensible to Americans who are not used to listening to speakers whose first language is not English. Table 1 provides descriptions of TSE test score ranges and their meanings.

Table 1. Generic Description of TSE Test Score Ranges

150-199	Generally comprehensible but with frequent errors in pronunciation, grammar, choice of vocabulary items, and with some pauses and rephrasing.
200-249	Generally comprehensible with some errors in pronunciations, grammar, choice of vocabulary items, or with pauses or occasional rephrasing.
250-300	Completely comprehensible in normal speech, with occasional grammatical or pronunciation errors in very colloquial phrases.

The TSE is administered and evaluated by faculty in the Department of Modern Languages who are trained in language assessment and have expertise in teaching English as a Second Language. Test scores are forwarded to the Graduate School office. By successfully completing the Intensive English Language Summer Program and attaining a minimum score of 225 on the Test of Spoken English, a student will have met the University's spoken language proficiency requirements. Potential teaching assistants whose first language is English will be evaluated within individual departments through procedures such as interviews and sample presentations. Table 2 provides information concerning the relationship between TSE scores and duties that Graduate Assistants are allowed to perform.

Table 2. Relationship Between Minimum TSE Scores and Allowable Teaching Responsibilities

250 Classroom Instructor	Responsible for developing and delivering lecture materials to undergraduate students. The overall plan for the course is the responsibility of a full-time faculty member, but the specific classroom material is the responsibility of the graduate student. The graduate student presents new material to students and evaluates their performance through testing, etc
225 Laboratory Teaching Assistant	Responsible for guiding undergraduate students during the performance of laboratory experiments, assuring that the experiments are carried out safely. The experiments performed and the laboratory instruction sheets are the responsibility of the full-time faculty member. The graduate assistant reviews material that is pertinent to the experiment, answers questions that arise, and oversees the students' experimental procedure. He/she also grades the laboratory reports that are submitted.
225 Recitation Teaching Assistant	Responsible for working assigned homework problems in front of a class of 20 to 30 students and answering questions students ask about these problems. Full written solutions to the homework are prepared by the faculty member responsible for the lecture part of the course. The Recitation Teaching Assistant is given these solutions to study several days before the recitation class meets.
225 Tutor	Responsible for assisting students to develop understanding of concepts and other material covered in courses. Tutors students on a regularly scheduled basis or during scheduled office hours. Meets with course instructor on a weekly basis to discuss potential difficulties in course content.
225 Grading Assistant	Responsible for grading papers and problems submitted by students to a full-time faculty member in a lecture course. The full-time faculty member is responsible for selecting the assigned homework to be graded. The grader has no direct contact with the students.

2.3 Temporary Instructional Staff:

Departments/units are responsible for determining and documenting the communication proficiency of temporary or part-time instructional staff who are not hired through an open search process (see Section 1.0 above).

3. DETERMINATION OF PROFICIENCY PRIOR TO EMPLOYMENT:

As described within Section A, potential teaching assistants and faculty are evaluated for proficiency prior to employment.

4. CONTINUOUS IMPROVEMENT OF COMMUNICATION PROFICIENCY

Each NDSU instructor is evaluated annually within the unit in which he/she works, using specific procedures developed within the unit. The head of the unit is always involved, but others may be involved as well.

All instructors provide course evaluation forms to the students in each class that they teach. These forms include an item concerning the evaluation of communication proficiency of the instructor. This item was developed by the Teaching and Professional Service Committee at NDSU. The student response to this item can be associated with a numerical score, for which a mean and variance can be calculated. In general, annual evaluation procedures within units must include quantitative assessment measures and should include the student evaluation information.

Other procedures that units might employ in evaluation of communication proficiency include classroom visits, consideration of materials generated for classroom use and other purposes, seminars and other presentations, and solicitation of input from peers and students. Based on the results of the evaluation within the unit, an instructor may choose to or be required to participate in an improvement program.

The University is continuously engaged in programs and mechanisms to improve communication proficiency. Example means of improvement may include:

- * Mentoring
- * Workshops sponsored by the Teaching Support Center, the Office of Assessment and Institutional Research, the Institute for the Study of Cultural Diversity, and other campus organizations
- * Personal and professional development materials and initiatives, such as video and audio tape, training software (e.g., Speech works), and audio cassette training materials.
- * Programs led by persons with training in improving articulation, intonation, rhythm, and other presentation skills
- * Programs led by persons with training in diminishing accents, stuttering, stress, and other barriers to effective presentation

5. REGISTRATION OF CONCERNS

The resolution of conflicts concerning communication proficiency is best solved as close to the source as possible. Students are urged to contact the instructor to discuss concerns. If the conflict cannot be resolved with the instructor, the student may meet with the chair of the department, the dean of the college, and the Vice President for Academic Affairs or the Vice President's designee. Administrators who receive formal complaints must respond and take appropriate action within 15 days. Students should move from one level to another only if an acceptable resolution cannot be reached at the lower level.

At any time, the student may contact the Associate Director, Student Rights and Responsibilities for advice concerning how to register a communication proficiency complaint, or for assistance if the process above cannot be utilized for any reason. The Associate Director, Student Rights and Responsibilities will report complaints to the appropriate chair and to the Associate Vice President for Academic Affairs.

The ultimate responsibility for the resolution of such complaints will reside with the Office of the Vice President for Academic Affairs. This office will be responsible for verifying the appropriate remedial action, if needed, is carried out. At the direction of the Vice President for Academic Affairs or the designee, the Associate Director, Student Rights and Responsibilities will convey a summary of any actions taken to the student complainant.

A statement describing the process will be included in the document Rights and Responsibilities of Community: A Code of Student Conduct and in the NDSU Bulletin.

6. REVIEWING EFFECTIVENESS OF THE POLICY

This policy will be reviewed periodically but at an interval of not less than every two years by the Vice-President for Academic Affairs or designee.

7. COMPLIANCE WITH FEDERAL AND STATE LAWS

Employees who feel that they may have been discriminated against by the application of this policy may utilize the Equal Opportunity grievance process at the University.

HISTORY: June 1994, May 2004



NDSU HOME PAGE



POLICY MANUAL HOME PAGE

NDSU Webmaster

Last Updated: Tuesday, January 22, 2002, 2:31 PM

Published by North Dakota State University

Dickinson State University

Faculty Handbook Exerpt

II.A.2 COMMUNICATIONS (LANGUAGE) PROFICIENCY POLICY

STATUTORY REFERENCE:

The DSU policy regarding communications (language) proficiency is in accordance with Section 15-10-13.1 of the North Dakota Century Code and State Board Policy 609 which requires the demonstration of English language proficiency for all employees in an instructional capacity (See **Appendix II-T**).

GENERAL POLICY STATEMENT:

The following policy establishes a process for verifying communication skills, including the verbal and written English language proficiency of all personnel whose appointments include classroom instruction. The process includes procedures ensuring compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act and prohibits discrimination against a qualified individual with disabilities. The process guarantees protection against discrimination in violation of other rights protected under federal and state constitutions or laws and Board policies to the best of the institution's ability.

II. Faculty Personnel Policies and Procedures

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PROCEDURES:

- A. Prior to employment, the communications (language) proficiency of the finalists in the applicant pool will be determined through the following methods:
 1. Written proficiency in the English language will be determined by a thorough examination by the Search Committee of the written documents tendered in support of the candidate's application. Ability to communicate via writing will be determined through this examination process. Search Committee members will indicate their evaluation of the candidate's proficiency and ability to communicate in writing on the written communication part of the **Faculty Candidate Evaluation Form** (See **Appendix II-T**). The Search Committee Chair will summarize the committee's evaluation on the Chair's Faculty Candidate Evaluation Form.
 2. The candidate's ability to verbally communicate and verbal proficiency in the English language will be determined through the following means:

- a. The Chair of the Search Committee will hold a telephone interview with the candidate prior to being invited to the campus for a personal interview. The Committee Chair will assess the candidate's ability to be understood in this verbal conversation.
 - b. The candidate will provide a verbal teaching presentation critiqued by the Search Committee and a student audience during the campus visit and interview session. The Search Committee members will be asked to comment on the Faculty Candidate Evaluation Form under the verbal communication and presentation categories with regard to the candidate's verbal skills and ability to be understood.
3. A consensus among the Search Committee members must be reached regarding the candidate's level of proficiency in both written and verbal English language and the ability to communicate.
 - a. The Communications Proficiency evaluation on the Faculty Candidate Evaluation Form filed by the Search Committee Chair as part of the candidate evaluation process must indicate that the Search Committee has determined that the candidate has adequate communication skills with written and verbal English to be sufficiently understandable for instructional purposes in the discipline to be taught. This level of proficiency may vary according to discipline. The evaluation will specifically address communication strengths and weaknesses and recommend any plan for improvement if necessary.

II. Faculty Personnel Policies and Procedures II-6

- b. This communications proficiency evaluation will be submitted by the Search Committee Chair as part of candidate's application file and, if employed, the evaluation will be included in the official personnel file.
 4. In addition to the above procedures, those applicants whose native language is not English may be asked to provide a TOEFL score of 550 or above as further evidence of proficiency.
- B. After employment,** the following methods will be employed as a means of ensuring a continuous improvement of communication (language) proficiency for faculty members (both full-time and adjunct).
1. If deemed necessary by the Department Chair and approved by the College Dean, a program of communication (language) skill development (both written and verbal) will be developed for a faculty person considered to have a communications (either verbal or writing) deficiency with participation as a condition of continued employment.

- a. The communication (language) development program will be based on diagnostic testing provided by the DSU Student Support Services and individualized for the faculty person.
- b. The communication (language) development program for the faculty person will be operated through the Student Support Services. This development program will be continued until acceptable proficiency levels are demonstrated either through significant increases in diagnostic testing scores or, through demonstrated improvement in communications skills to the Student Support Services Director and the University clientele affected; this demonstration may be secured through informal polling and interviews conducted by the Director in conjunction with the Department Chair.
 - 1) The communication (language) development program will be submitted as part of the official personnel file.
 - 2) Participation and achievement by the faculty person in the communication (language) development program will be monitored and recorded as an official document to also be included in the personnel file.
- 2. Irrespective of initial employment considerations, any faculty member (both full-time and adjunct) may be recommended for diagnostic testing and a subsequent communication (language) development program if sufficient evidence indicates a language proficiency problem.
 - a. Completion of such an on-going communication (language) development program for current faculty may be a condition of continued employment and indicated contractually.

II. Faculty Personnel Policies and Procedures

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- 3. The Office of the Vice President for Academic Affairs will be notified of all faculty communication (language) development programs and will be responsible (along with college deans and department chairs) for implementation.
 - a. The Vice President for Academic Affairs will report such communication (language) development programs to the President's Office for contractual considerations and progress reports.
- C. Special considerations and/or methods involving specialized testing and/or equipment may be necessary to evaluate potential faculty and existing faculty to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act, as well as federal and state constitutions and laws. The mechanisms used to determine communications (language) proficiency will take into consideration inability of otherwise qualified candidates and/or faculty

to demonstrate proficiency because of disability, race, religion or other protected characteristics.

D. Students (and personnel) affected by the language proficiency policy may register concerns related to the provisions of this policy with the academic Department Chair.

- 1) The Departmental Chairs in consultation with the College Dean will recommend whatever action is deemed necessary to address the concerns with the College Dean implementing the recommended action.
- 2) If the plan of action and/or development program regarding communications (language) proficiency does not produce the desired results in the estimation of students and/or personnel involved in the initial concerns, an additional appeal may be made directly to the Vice President for Academic Affairs for further action.
- 3) Faculty who are adversely affected by this policy and feel that any recommended plan of action or communications development program is unwarranted may appeal the decision and/or action through the grievance process outlined in the Faculty Handbook.

E. The Vice President for Academic Affairs will periodically review the effectiveness of the communications (language) proficiency policy and provide reports on this topic to the State Board of Higher Education upon request.

- 1) The periodic review will include planning for continuous improvement of the communication (language) proficiency of all instructors through programs and activities developed through the VPAA's Office and utilizing faculty development funds for these endeavors.

II. Faculty Personnel Policies and Procedures

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- 2) Plans developed to improve and assess DSU's communications (language) proficiency program will recognize the needs of departments, academic programs, faculty, staff and students and will include an inclusive mechanism for this purpose.

F. The Communications (Language) Proficiency Policy will be included in the DSU Faculty Handbook and the DSU Student Guide. The policy will also be provided to the DSU Affirmative Action Officer.

- 1) This policy (and all changes) are subject to review and recommendation by the DSU Faculty Senate and final approval by the DSU President for inclusion in the above mentioned publications.
- 2) The DSU Communications (Language) Proficiency Policy will be filed with the State Board of Higher Education per SBHE Policy 609.

This Revision of the 1994 DSU Communications Policy mandated by the NDUS Central Office in 1995 was developed by the Dean of Arts and Sciences and the VPAA Council in the fall of 1996; approved by the Faculty Senate Executive Committee (1/97) with recommended changes; reviewed and approved by the Cabinet and President (10/98); and implemented on July 1, 1999.

Bismarck State College
House Education Committee, January 25, 2005
House Bill 1364

Chairperson Kelsch and Members of the House Education Committee:

My name is Dr. Janelle Masters, Dean of Faculty at Bismarck State College.

I am here to testify in opposition to House Bill 1364.

As stated in State Board of Higher Policy 609 each institution shall establish a process for verifying communication skills, including the verbal and written English language proficiency of all personnel whose appointments include classroom instruction.

BSC has a very thorough application and interview process that fully verifies and covers this policy. For our fulltime faculty position openings the top candidates interviewed are required to submit the appropriate paperwork (application, resume, education philosophy statement, letter of application, and official transcripts), have a formal interview, and present a 20-30 minute lecture on the subject matter required for the position. Also, for our part-time adjunct positions we require all of the above paperwork (except the education philosophy statement) and there is a formal interview conducted before a candidate is hired. Our process meets the needs of the policy.

As the policy states, each institution shall establish a mechanism for students and personnel affected by this policy to register concerns related to the provisions of this policy. Students currently have a number of avenues to voice concerns they have regarding an instructor that they believe does not speak English clearly and with good pronunciation. Students can go through the informal grievance process by visiting individually with the instructor, the department chair, or the appropriate dean. If this does not improve the situation the student can file a grievance with the department chair and the formal grievance procedure would be followed. (Copies of Student Grievance Policy have been supplied).

BSC is an equal opportunity employer and follows the laws, rules and regulations required to ensure we are in compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act as well as the other applicable federal and state laws.

Allowing students to get full reimbursement for the tuition and fees paid for their class if the student believes the individual assigned to instruct the class does not speak English clearly and with good pronunciation would significantly impact enrollment and financial issues for institutions. The bill does not state that the student needs to present any evidence of the problem, just to put it in writing. One could imagine a student being unhappy with a class for any number of reasons and using the English of the instructor as an excuse to get his/her money reimbursed.

Allowing ten percent of the students in a class to file a written complaint within the first ten days of the beginning of the session, would necessitate a huge monitoring process and significantly impact finances. Reassigning an individual to a non-teaching position means another position would have to be created and another instructor would have to be hired to take the first instructors' position whose salary we would need to pay. According to the bill, if there were one student in a class of ten students who objected to the English of the instructor and if this student

followed this process and filed a complaint we would have to remove the instructor for further training, hire someone else to teach the class, find other work for the instructor all based on the complaint of one student.

What HB 1364 proposes would be very cumbersome to administer, would have significant financial implications, and is redundant. SBHE Policy 609, Communications Proficiency, addresses the issues of this bill already and meets students' needs. BSC adheres to this policy.

BISMARCK STATE COLLEGE

Policy and Procedures

Student Policy

Student Grievance and Appeal

Policy:

Bismarck State College recognizes the importance of providing prompt and efficient procedures for fair and equitable resolutions of a student grievance or appeal. The following are procedures to follow for resolving a grievance or appeal.

Definitions:

Grievance: A grievance is an alleged unfair, inequitable, or discriminatory interpretation, application, or implementation of college policy or procedure.

Appeal: An appeal is a request for reconsideration of a decision or sanction of the application of a college policy or procedure. Appealable decisions include sanctions/actions taken for student conduct, housing, or parking violations. Academic grades and financial aid decisions are also appealable.

Specific Procedures:

Grade Appeals: Students who receive a grade that they believe does not correctly reflect their performance should discuss the grade with the instructor. If the matter is not resolved, it should be discussed with the appropriate department chair. If the matter is still not resolved, it should be discussed with the Associate Vice President for Academic Affairs. If the matter remains unresolved, the student may appeal the issue to the Standing Committee on Grade Appeals. Information relating to the appeal process is available in the Associate Vice President for Academic Affairs Office.

Financial Aid Appeal: Students who have a grievance or concern about a financial aid decision must present their appeal or grievance directly to the Financial Aid Committee. Information relating to the appeal process is available in the Financial Aid Office.

General Grievance/Appeal Procedure:

Informal Process: The purpose of the informal procedure is to allow the parties involved in a grievance or appealable decision to attempt to resolve the problem themselves through the following steps:

1. The student should attempt to discuss the complaint with the person who appears to be the source of the grievance or who made the appealable decision. This should be done within 10 class days of the incident or situation.
2. If the problem is not resolved in the first step, the student should take the complaint to the respondent's immediate supervisor.

3. If the problem is not resolved in to the satisfaction of the student through the informal process, the student may enter the formal grievance process. This should take place within 5 class days after talking to the supervisor in step 2.
4. If the student does not initiate the informal process within 10 class days of the incident or situation but at a later date, either the student or the respondent may refer the issue to the formal grievance process.

Formal Grievance/Appeal Process:

1. The student shall submit a complaint in writing to the appropriate college Director, Department Chair, or Dean (respondent) of the area responsible for the action which forms the basis of the grievance or appeal. The complaint shall contain a clear and concise statement of the grievance or appeal, the remedies sought and a request for a meeting with the involved person or persons. The complaint must be submitted within 10 class days of the event, unless there are extenuating circumstances.
2. The respondent shall schedule a meeting with the student within 10 class days of receiving the written grievance or appeal, to discuss the matter. A written reply by the respondent to the student indicating the results of the meeting and including further action, if any, to be taken shall be attached to the written grievance or appeal.
3. If the student is not satisfied, the student may appeal in writing to the Chair of the Standing Committee on Student and Campus Relations. The grievance or appeal must be filed within 5 class days after the decision of the Director, Department Chair or Dean. The Committee Chair will inform the student and committee members of the specific time and place of the meeting which must be held within 7 class days of receipt of the request.
4. The student shall be given every reasonable opportunity to present the case, including the presentation of written and oral testimony, alone or by witnesses, and all parties will have the right to be assisted by an advisor, friend or counsel.
5. The Committee Chair shall submit a written report of the proceedings to the student within 2 class days of the decision. The report must include all matters upon which the final recommendations are made.
6. The student may appeal the committee decision to the appropriate Vice President of the College. The appeal must be in writing and within 5 class days of receipt of the committee decision. The appropriate Vice President will uphold, modify or reject the committee decision, and this will become the final campus decision on the grievance or appeal. A written reply by the Vice President to the student indicating the results of the meeting and including further action, if any, to be taken shall be attached to the written grievance or appeal. The student and appropriate college officials shall be notified in writing of the decision within 10 class days after the last consideration of the grievance or appeal.

Notice of Nondiscrimination:

Bismarck State College is an equal opportunity institution that does not discriminate on the basis of race, color, gender, national origin, age, religion, or disability in its admissions, student aid, employment practices, education programs or other related activities.

Inquiries concerning compliance with Title VI of the Civil Rights Act of 1964, Title VII,

Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act, and the Age Discrimination and Employment Act may be referred to Rita Lindgren, Chief Human Resources Officer, Bismarck State College, Office Annex, Room 102, Bismarck, ND 58506-5587 (701) 224-5427, or to the Office of Civil Rights, U.S. Department of Education, 8930 Ward Parkway, Suite 2037, Kansas City, Missouri 64114, Telephone (816) 268-0550, Fax (816) 823-1404, TDD 1-800-437-0833, E-mail ocr.KansasCity@ed.gov, Website <http://www.ed.gov/ocr/>.

History of This Policy:

First policy draft June 19, 1978.

Revisions - April 2, 1982; June 21, 1982; February 22, 1983; October 22, 1985; November 4, 1985; August 11, 1987; December 28, 1987, July 2, 1990; July 17, 1990; October 22, 1991; August 1, 1992; July 27, 1994; June 6, 1998; January 13, 2004.

Revision - Approved by the President's Cabinet on March 27, 2001, effective May 14, 2001.

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NORTH DAKOTA
PUBLIC EMPLOYEES ASSOCIATION

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AMERICAN FEDERATION
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HB 1364
25 Jan 05

TESTIMONY IN OPPOSITION TO HB 1364
Before the House Education Committee
North Dakota Public Employees Association American Federation of Teachers, #4660
AFL-CIO
January 25, 2005

Chair Kelsch, members of the House Education Committee, my name is Chris Runge and I am the Executive Director of the North Dakota Public Employees Association, AFT Local 4660. I am here in opposition to HB 1364, a bill that would allow a relatively small number of students to unilaterally remove a higher education instructor from the classroom with absolutely no due process rights.

This bill will shut the door on the ability of an instructor to fulfill the duties of a duly signed contract with the university system. This bill is a heavy handed attempt to allow a single student or a very few number of students to remove unilaterally, with no due process an instructor from his teaching duties. Even with amendments, this bill is an issue the university can handle without legislative intervention.

This bill has many problems that need to be addressed. First, many campuses have only one instructor that teaches an entire set of classes, like biology, physics, or engineering. Removal of that instructor with absolutely no recourse for the college or university will wreak havoc on the entire curriculum for all students enrolled in that discipline. Requiring the college or university to unceremoniously remove an instructor to a non-teaching position may well prove impossible and will cause serious financial hardship for a department and the campus as a whole.

Quality Services from Quality People

Testimony

The "10%" requirement in some cases would require only one or two students to remove an instructor from his or her teaching duties again. Most of the campuses do not have other faculty waiting in the wings to carry on for an instructor who has been removed from teaching duties. All faculty are teaching faculty. For example, at Minot State University, there are only two faculty who teach physics. Removing one of them would require canceling 50% of the physics course with a serious disruption to the programs of the remaining students, such as postponing graduation, students deciding not leave the campus, students dropping below full time status with subsequent loss of financial aid. It should also be noted that the tenth day of class is the last day to add a course, so a student in a class where the instructor has been removed by the provisions of this bill would not have recourse of picking up some other course.

This bill does not provide any type of due process for the instructor who has been removed and allows a small number of students to unilaterally remove that instructor from a classroom. This bill turns on its head many of the policies and procedures that the university system relies on for dealing with faculty.

NDPEA is also concerned with the message that this bill sends to our campuses and non-native born instructors. Many of our campuses already lack diversity in the faculty and many candidates upon seeing this law, will opt to not come to North Dakota at all. Allowing a small number of students to unilaterally remove an instructor is not the answer.

Over the last few sessions, this legislature has made significant strides to provide the university system with the flexibility to do its business and to give our students a quality education. This issue should be handled by the university system. This bill flies in the face of that flexibility and sends the wrong message. This bill is wrought with potential abuses and potentially puts all the power in the hands of a few students to unilaterally remove an instructor to the detriment of the vast majority of students, the program and the university. Please give this bill a unanimous DO NOT PASS.

Mr. Chairman and members of the Senate Education Committee,

This bill is before you to voice the concerns of a great many university students – past, present and future – and their parents. There is an outcry for attention by the consumers of the university system for a higher standard of English proficiency for the instructor.

Various times over the years this issue has been brought up and was put into place about 10 years ago. But the situation is no better and most would say it is worse.

Although we are told by NDUS “there are policies in place”, they are subjective and as we know great manuals on policies can be written, but if not applied or practical and do not accomplish the purpose they were written for, then it is a waste and offer no solution.

I do NOT offer this as a criticism, as some think; I bring this situation forward so we are able to address the issue that the University Systems # 1 priority is to educate the students who are there customers. While research and diversity are important they are the 2nd and 3rd priorities.

I appreciate what the foreign born residents bring to the Universities and am happy to have people of their skills, education, and ability living, learning and teaching here. But it is not right that the students must put all their energy into trying to understand what an instructor is saying and leave little energy left to absorb meaningful subject matter or appreciate the cultural diversity. This is discouraging for the students.

The students are told to overcome the language barrier and accept diversity; I feel we should expect the same high standard for the instructors. The instructors (and the university system) should do what ever is necessary to adjust to the needs of the students. Being able to communicate clearly will greatly improve their chances for professional advancements, future work opportunities and interaction in the communities.

The North Dakota University System still claims there is no problem. But I hope this discussion will lead to some answers and results for all the students and families that are spending a great deal of money for a product that is not being delivered. This issue had gained national attention and is being found to be a problem in many areas of the country. I hope we can take the lead in addressing it.

Thank you,
Rep. Bette Grande
District 41, Fargo, ND

NORTH DAKOTA UNIVERSITY SYSTEM

Testimony to Senate Education Committee

In opposition of HB 1364

**Mike Hillman, Vice Chancellor for Academic
and Student Affairs**

MARCH 9, 2005

Good morning Chairman Freborg and members of the Senate Education Committee. For the record, my name is Mike Hillman, Vice Chancellor for Academic and Student Affairs with the North Dakota University System. I am testifying in opposition to HB 1364 based on formal action by The State Board for Higher Education taken at its January, 2005 meeting. As I will attempt to explain in greater detail, strong Board and campus policies are already in place to address the communication skills of instructors within the system and passing this bill may actually do more harm than good.

I have attached copies of State Board Policy 609 Communication Proficiency, as well as samples of two campus policies, NDSU Section 339 and DSU Faculty Handbook section 11.A.2 which address the communication proficiency of instructors. To address the needs of eleven very different system campuses, Board policy lays out some very clear expectations for campus responsibility in this area, including all of the points addressed in HB 1364 including:

- Determining proficiency prior to employment
- Providing for continuous improvement of communication proficiency of all instructors
- Providing a mechanism for students to register concerns
- Reporting the effectiveness of the policy

The system regularly provides reports to the legislature without being mandated to do so by state law. Mandating a report in state law, as proposed by HB 1364, does not promote the trusting, partnership approach to higher education governance which is an element in nationally recommended higher education governance models. Finally, passing a state law regarding the English communication skills of instructors may have some unintended negative consequences. It may communicate to North Dakota high school graduates and graduates of high schools in other states that we have a large and unmanageable problem with the English communication abilities of our instructors when no evidence has been provided that supports that position. It may also unintentionally communicate that diverse peoples are no longer welcome in North Dakota, a state with a long immigration history.

Chairman Freborg and members of the Senate Education Committee, I urge you to recommend "Do Not Pass" to HB 1364 and I pledge that the University System and its campuses will continue to respond to every complaint regarding the communication skills of instructors, and we will provide any reports requested by any legislator or legislative committee without the need to place that requirement in state law. Thank you for the opportunity to explain the State Board for Higher Education's position on HB 1364. I will attempt to address any questions from the committee.

Dickinson STATE UNIVERSITY

FACULTY HANDBOOK *2004-2005* *EXCERPT*

II.A.2 COMMUNICATIONS (LANGUAGE) PROFICIENCY POLICY

STATUTORY REFERENCE:

The DSU policy regarding communications (language) proficiency is in accordance with Section 15-10-13.1 of the North Dakota Century Code and State Board Policy 609 which requires the demonstration of English language proficiency for all employees in an instructional capacity (See **Appendix II-T**).

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PROCEDURES:

- A. Prior to employment, the communications (language) proficiency of the finalists in the applicant pool will be determined through the following methods:
1. Written proficiency in the English language will be determined by a thorough examination by the Search Committee of the written documents tendered in support of the candidate's application. Ability to communicate via writing will be determined through this examination process. Search Committee members will indicate their evaluation of the candidate's proficiency and ability to communicate in writing on the written communication part of the **Faculty Candidate Evaluation Form (See Appendix II-T)**. The Search Committee Chair will summarize the committee's evaluation on the Chair's Faculty Candidate Evaluation Form.
 2. The candidate's ability to verbally communicate and verbal proficiency in the English language will be determined through the following means:
 - a. The Chair of the Search Committee will hold a telephone interview with the candidate prior to being invited to the campus for a personal interview. The Committee Chair will assess the candidate's ability to be understood in this verbal conversation.
 - b. The candidate will provide a verbal teaching presentation critiqued by the Search Committee and a student audience during the campus visit and interview session. The Search Committee members will be asked to comment on the Faculty Candidate Evaluation Form under the verbal communication and presentation categories with regard to the candidate's verbal skills and ability to be understood.
 3. A consensus among the Search Committee members must be reached regarding the candidate's level of proficiency in both written and verbal English language and the ability to communicate.
 - a. The Communications Proficiency evaluation on the Faculty Candidate Evaluation Form filed by the Search Committee Chair as part of the candidate evaluation process must indicate that the Search Committee has determined that the candidate has adequate communication skills with written and verbal English to be sufficiently understandable for instructional purposes in the discipline to be taught. This level of proficiency may vary according to discipline. The evaluation will specifically address communication strengths and weaknesses and recommend any plan for improvement if necessary.

- b. This communication proficiency evaluation will be submitted by the Search Committee Chair as part of candidate's application file and, if employed, the evaluation will be included in the official personnel file.
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- B. After employment, the following methods will be employed as a means of ensuring a continuous improvement of communication (language) proficiency for faculty members (both full-time and adjunct).
1. If deemed necessary by the Department Chair and approved by the College Dean, a program of communication (language) skill development (both written and verbal) will be developed for a faculty person considered to have a communications (either verbal or writing) deficiency with participation as a condition of continued employment.
 - a. The communication (language) development program will be based on diagnostic testing provided by the DSU Student Support Services and individualized for the faculty person.
 - b. The communication (language) development program for the faculty person will be operated through the Student Support Services. This development program will be continued until acceptable proficiency levels are demonstrated either through significant increases in diagnostic testing scores or, through demonstrated improvement in communications skills to the Student Support Services Director and the University clientele affected; this demonstration may be secured through informal polling and interviews conducted by the Director in conjunction with the Department Chair.
 - 1) The communication (language) development program will be submitted as part of the official personnel file.
 - 2) Participation and achievement by the faculty person in the communication (language) development program will be monitored and recorded as an official document to also be included in the personnel file.
 2. Irrespective of initial employment considerations, any faculty member (both full-time and adjunct) may be recommended for diagnostic testing and a subsequent communication (language) development program if sufficient evidence indicates a language proficiency problem.
 - a. Completion of such an on-going communication (language) development program for current faculty may be a condition of continued employment and indicated contractually.

II. Faculty Personnel Policies and Procedures

II-7

3. The Office of the Vice President for Academic Affairs will be notified of all faculty communication (language) development programs and will be responsible (along with college deans and department chairs) for implementation.
 - a. The Vice President for Academic Affairs will report such communication (language) development programs to the President's Office for contractual considerations and progress reports.
- C. Special considerations and/or methods involving specialized testing and/or equipment may be necessary to evaluate potential faculty and existing faculty to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act, as well as federal and state constitutions and laws. The mechanisms used to determine communications (language) proficiency will take into consideration inability of otherwise qualified candidates and/or faculty to demonstrate proficiency because of disability, race, religion or other protected characteristics.
- D. Students (and personnel) affected by the language proficiency policy may register concerns related to the provisions of this policy with the academic Department Chair.
 - 1) The Departmental Chairs in consultation with the College Dean will recommend whatever action is deemed necessary to address the concerns with the College Dean implementing the recommended action.
 - 2) If the plan of action and/or development program regarding communications (language) proficiency does not produce the desired results in the estimation of students and/or personnel involved in the initial concerns, an additional appeal may be made directly to the Vice President for Academic Affairs for further action.
 - 3) Faculty who are adversely affected by this policy and feel that any recommended plan of action or communications development program is unwarranted may appeal the decision and/or action through the grievance process outlined in the Faculty Handbook.
- E. The Vice President for Academic Affairs will periodically review the effectiveness of the communications (language) proficiency policy and provide reports on this topic to the State Board of Higher Education upon request.
 - 1) The periodic review will include planning for continuous improvement of the communication (language) proficiency of all instructors through programs and activities developed through the VPAA's Office and utilizing faculty development funds for these endeavors.

- 2) Plans developed to improve and assess DSU's communications (language) proficiency program will recognize the needs of departments, academic programs, faculty, staff and students and will include an inclusive mechanism for this purpose.
- F. The Communications (Language) Proficiency Policy will be included in the DSU Faculty Handbook and the DSU Student Guide. The policy will also be provided to the DSU Affirmative Action Officer.
- 1) This policy (and all changes) are subject to review and recommendation by the DSU Faculty Senate and final approval by the DSU President for inclusion in the above mentioned publications.
 - 2) The DSU Communications (Language) Proficiency Policy will be filed with the State Board of Higher Education per SBHE Policy 609.

This Revision of the 1994 DSU Communications Policy mandated by the NDUS Central Office in 1995 was developed by the Dean of Arts and Sciences and the VPAA Council in the fall of 1996; approved by the Faculty Senate Executive Committee (1/97) with recommended changes; reviewed and approved by the Cabinet and President (10/98); and implemented on July 1, 1999.

II.A.3. Equal Opportunity Commitment

- a. In accordance with Federal Executive Order #11246, as amended by Executive Order #11375, Dickinson State University is committed to equal opportunity and access to facilities, academic programs and student services for all persons without regard to race, age, color, religion, national origin or sex.
- b. As stipulated in Section 504 of the Rehabilitation Act of 1973, no otherwise qualified handicapped individual in the United States as defined in Section 7 (6) of that Act, shall, solely by reason of his/her handicap, be excluded from participation, be denied the benefits of or be subjected to discrimination under any program or activity at Dickinson State University. Dickinson State seeks to recruit, admit and retain students and employ, retain and promote faculty and staff on a non-discriminatory basis.
- c. All University publications and recruitment advertising must include the official University affirmative action statement or the standard abbreviation for Affirmative Action, Equal Opportunity Employer (AA/EOE).